



MAKING DAVIS-BACON

*A Practical
Guide
for States,
Indian Tribes
and*

JUNE 2001



Streamlining Davis-Bacon

HUD's Streamlining Davis-Bacon Initiative took shape following a comprehensive review and analysis of the paperwork, processes, and procedures which had evolved over time both at the HUD level as well as among the almost 6000 State and local agencies to which HUD has delegated day-to-day labor standards administration and enforcement responsibilities. Our review objectives were simple. We wanted to define exactly what HUD and its client agencies were doing to protect the statutory rights of construction workers to be paid prevailing wage rates. Second, with that information and feedback, we wanted to implement improved performance and accountability measures by making systemic changes aimed at achieving more focused and effective and efficient use of scarce resources.

What we found...

What we found in our review was no surprise. There were widely divergent approaches, redundant processes, and a multitude of forms and paperwork requirements. Basically, we found a law enforcement system which had become encrusted with layers upon layers of requirements but which had lost a clear sight of its purpose. Rather than a responsive, accountable, and dynamic law enforcement system, there had developed a ponderous, static, and too often arbitrary bureaucracy. We had to take action.

What we did...

First, we identified and redefined our primary labor standards objectives and identified who is/are responsible for their implementation. Second, we stripped away unnecessary procedures, policies, and paperwork which did not measurably contribute to those objectives. Finally, we initiated a marketing and implementation campaign communicating our new approach to workers' rights protection which we call *Streamlining Davis-Bacon*. This Guide has been developed as part of our communications strategy and describes in detail what Streamlining Davis-Bacon means to you in practical terms. It will help you develop organizational and administrative approaches which best work for you while still enabling you to meet your labor standards contractual responsibilities in the administration of HUD-assisted programs as efficiently as possible. It will also be useful to you as a training tool and ready reference for compliance staff.

Whom to contact...

The HUD Labor Relations Field staff is your support team available to provide training and technical assistance in the administration of HUD programs subject to Federal labor standards provisions. Please call upon the HUD Labor Relations Field staff for your jurisdiction at any time. Also, please visit the Office of Labor Relations at the **HUD Home Page** on the World Wide Web. At this site you will have ready access to publications, forms, the latest policy letters, and related links which will help you administer labor standards. Most of the publications and forms referenced in this Guide are available in the HUD Labor Relations Library at:

www.hud.gov/offices/olr

You can also obtain additional copies of this Guide and other publications by telephone from HUD's Customer Service Center at (800) 767-7468.

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The Basics

As part of HUD 2020 Management Reform Plan, the Office of Labor Relations took a bold but measured look at our overall mission and what we and our client agencies were doing on a day-to-day basis to carry it out. We identified five **Key Labor Standards Objectives** – the basics of what it is that we must accomplish in order to protect workers' rights. We also identified all of the policies, procedures and paperwork at our disposal – what we do ourselves and what we impose on contractors. Under Streamlining, we eliminated those policies, procedures and paperwork requirements that were not statutory or regulatory and that did not contribute to one or more of the Key Objectives.

Key Labor Standards Objectives

- I. Apply Davis-Bacon requirements properly.** Make certain that labor standards, including Davis-Bacon prevailing wage rates, are applied where required. Ensure that any exemptions or exceptions are identified.
- II. Through education and advice, support contractor compliance with labor standards.** Provide basic training and technical support to contractors to ensure that they understand their obligations under prevailing wage and reporting requirements.
- III. Monitor contractor performance.** Perform reviews of certified payroll submissions and other information to help ensure contractor compliance with labor standards provisions and the payment of prevailing wages to workers.
- IV. Investigate probable violations and complaints of underpayment.** Thoroughly explore any evidence of violations, especially allegations of underpayment.
- V. Pursue debarment and other available sanctions against repeat labor standards violators.** Carry-out a no-tolerance policy toward contractors who violate prevailing wage laws.

Local Agency Responsibilities for Davis-Bacon Labor Standards

Local contracting agencies (LCAs) that administer HUD programs agree to administer and enforce Davis-Bacon requirements as a condition for receiving HUD program assistance. LCAs have the following responsibilities:

- 1. Designate appropriate staff** (*aka Contract Administrator*) before the start of construction to ensure compliance with all applicable labor standards requirements and to act for and in liaison with HUD. Provide the name(s) of the staff to the appropriate HUD Field Office Labor Relations.
- 2. Establish a construction contract management system** which meets the standards of Part 85 (24 CFR – HUD regulations), Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments.



3. **Ensure that all bid documents, contracts and subcontracts contain Federal labor standards provisions and the applicable Davis-Bacon wage decision.**
4. **Ensure that no contract is awarded to a contractor that is ineligible** (e.g., debarred) for Federally-assisted work.
5. **Conduct on-site inspections including interviews with laborers and mechanics** employed on the construction project. Ensure that the applicable Davis-Bacon wage decision and the Department of Labor's "Notice to Employees" are posted at the job site.
6. **Review certified payroll reports and related documentation.** Identify any discrepancies and/or violations. Ensure any needed corrections are made promptly.
7. **Maintain full documentation** of Federal labor standards administration and enforcement activities.
8. **Refer potential criminal or complex investigations to HUD**, in addition to Contract Work Hours and Safety Standards Act (CWHSSA) liquidated damages assessments for overtime violations and debarment recommendations.
9. **Comply with all HUD requirements** concerning special statutory, program and/or other requirements.
10. **Prepare Federal labor standards enforcement reports** as required in Department of Labor (DOL) regulations (29 CFR, Part 5, §5.7).

What Local Agencies Need to Carry Out These Responsibilities

In addition to basic knowledge about labor standards administration and enforcement, LCAs need basic reference and guidance materials. Many of these materials are available on-line. A complete list of website addresses referenced in this Guide is provided in the Appendix (Table ii). Also, the HUD Labor Relations Field Staff can assist you in obtaining hard copies of any materials offered in the Labor Relations Library on the HUD Homepage.

Labor Relations Reference and Guidance Materials

- **Specific Davis-Bacon Related Act (statute)** for the program involved. The clauses containing the Davis-Bacon labor standards provisions for each HUD program are key to making proper decisions concerning applicability. Determining whether Davis-Bacon wage rates are applicable in specific cases may be the most difficult task that LCAs face on a day-to-day basis. Excerpts from the HUD Related Acts – the labor standards provisions – may be found in the Appendix (Exhibit I) to this Guide. In addition, you'll find one-page treatments explaining the factors of applicability (how the language of the labor standards clauses is interpreted and applied in real situations) for CDBG and HOME (Exhibit 2). Similar treatments are being developed for public and Indian housing. These treatments will be available on-line at the HUD Labor

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Relations Library: www.hud.gov/olr/olr.html The full text of HUD program statutes including the HUD Davis-Bacon Related Acts are available on-line in Basic Laws (on Housing and Community Development) at: www.house.gov/banking/bashlaws.htm

- **HUD Regulations: 24 CFR;** Relevant Parts for the program involved. Many times the regulations will contain further information about Davis-Bacon aspects of the program. HUD regulations are available on-line at: www.access.gpo.gov/nara/cfr/cfr-table-search.html
- **DOL Regulations: 29 CFR;** Parts 1, 3, 5, 6 & 7. These regulations contain policy guidance and instructions for all agencies, including local contracting agencies, in the administration and enforcement of Davis-Bacon wage and reporting requirements. These DOL regulations are available on-line at the DOL homepage at: www.dol.gov/esa/public/regs/cfr/whdcfr.htm
- **Labor Relations Letters.** This is a special directives series designed to provide current and thorough guidance on Davis-Bacon issues in HUD programs. Popular topics include Davis-Bacon applicability under HOME, and prevailing wage requirements concerning self-employed laborers and mechanics. Labor Relations Letters are available on-line at the HUD Labor Relations Library.
- **Labor Relations Desk Guides.** These Guides are replacing in parts the HUD Handbook 1344.1, Federal Labor Standards in HUD Programs. One is HUD's *Contractor's Guide to Davis-Bacon* – an easy to use resource that explains Davis-Bacon requirements and what contractors must do to comply. These Guides are also available at the HUD Labor Relations Library.
- **On the Mark! Series.** Also available at the Labor Relations Library, this series contains simple, one-page suggestions containing time-saving tips to improve efficiency and effectiveness including new technologies and services available through the Internet.

The Basic Elements – Labor Standards Administration and Enforcement

Labor Standards Administration

Involves the activities that take place primarily before construction begins. Administration sets the stage for the enforcement activities that occur during the construction phase.

- I. **Determine Davis-Bacon applicability.** The first and sometimes most difficult step is determining whether and to what extent Davis-Bacon wage standards apply to a particular contract or project. The Factors of Applicability (in the Appendix) should be helpful. Most HUD-assisted construction work is covered by Davis-Bacon but there are some exceptions. The best and safest approach is whenever the contract/project involves construction work that is valued in excess of \$2,000 to assume that Davis-Bacon rates will be applicable and then look more closely to see if there's any reason for non-coverage.



Assuming that a determination has been made that Davis-Bacon wage rates are applicable:

2. **Prepare the bid documents/contract.** The contract for construction is the vehicle to ensure contractor compliance and Davis-Bacon wage enforcement. Therefore, the bid specifications and/or the contract for each project subject to Davis-Bacon wage rates must contain both a Davis-Bacon wage decision and its own labor standards clauses. These are usually bound into the contract specifications.
 - a. **Davis-Bacon Wage Decisions.** The Davis-Bacon wage decision is a listing of various construction work job classifications (such as Carpenter, Electrician, Plumber, Laborer, etc.) and the minimum wage rates (and fringe benefits, where prevailing) that people performing work in those classifications must be paid. Current Davis-Bacon wage decisions are available on-line at no cost at the Government Printing Office web site. The direct address for Davis-Bacon wage decisions is: <http://www.access.gpo.gov/davisbacon> (See *On the Mark!* OTM #7 (3/01) for more information about this on-line service.) You can also contact the HUD Labor Relations staff for assistance and/or for a copy of a Davis-Bacon wage decision.
 - b. **The labor standards clauses.** The labor standards clauses obligate the contractor to comply with Davis-Bacon wage and reporting requirements and provide for remedies and sanctions should violations occur. HUD has standard forms that contain the labor standards clauses appropriate for different programs: the HUD-4010, Federal Labor Standards Provisions, for CDBG and HOME; and the HUD-5370 for Public and Indian housing. These forms are available on-line at: www.hudclips.org/subscriber/html/forms.htm
3. **Verify contractor eligibility.** Once you have selected the contractor to whom you want to award the contract, you must verify that the contractor is not ineligible (e.g., debarred) from participation in Federal programs. You only need to verify the eligibility of the prime contractor. The U.S. General Services Administration maintains a list of debarred contractors which can be accessed on-line at: <http://epls.arnet.gov> (See *On the Mark!* OTM #6 (6/97) for more information about on-line verification.)
4. **Provide contractor training.** Make certain the contractor understands its responsibilities for Davis-Bacon compliance: The principal contractor (also referred to as the **prime** or **general contractor**) is responsible for the full compliance of all employers (the contractor, subcontractors and any lower-tier subcontractors) with the labor standards provisions applicable to the project. HUD has published a **Contractor's Guide to Davis-Bacon** for this purpose which provides basic information and instructions to contractors concerning Davis-Bacon wage and reporting requirements. Hard copies of the Guide are available from the HUD Labor Relations Field Staff. In addition, the Guide is available in a download-able PDF file at the HUD Labor Relations Library.

You may also wish to provide formal training separate from the contracting process for contractors who are interested in performing work on your HUD-assisted contracts and want to learn more about what is involved.

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Labor Standards Enforcement

Involves the activities that take place during construction to ensure contractor compliance.

1. **Posting the wage decision and Notice to Employees.** The contractor is required to display on the job site a copy of the applicable Davis-Bacon wage decision and the form WH-1321, *Notice to Employees*. The purpose of this posting is to provide information to the construction laborers and mechanics working on the project about their entitlement to the prevailing wage rate for their trade and to inform them of who to contact (the contract administrator) if they have any questions or want to file a complaint. HUD also has prepared a pamphlet explaining the rights of workers to be paid prevailing wages which you may make available to laborers and mechanics on the job site or through mailings.
 - a. **Project Wage Rate Sheet.** Many wage decisions are multi-paged and cover several counties and/or more than one type of construction. To make this vital information easier to read and understand, contract administrators can offer a Project Wage Rate Sheet – a one-page listing of only the wage rates applicable to the specific project involved – for posting on the job site. A blank copy of the Project Wage Rate Sheet is in the Appendix (Exhibit 3) to this Guide.
 - b. **Notice to Employees.** The Notice to Employees form is available on-line at HUDClips (www.hudclips.org/subscriber/html/forms.htm). The Notice is also available in Spanish text from the HUD Labor Relations Field Staff.
2. **Conduct on-site interviews with laborers and mechanics.** The contract administrator or a designee (such as an agency construction inspector) must periodically conduct interviews with the construction workers on the job site. The purpose of the interviews is to capture observations of the work being performed and to get the workers' views on the hours they work, the type work they perform and the wages they receive. Information gathered during the interviews is recorded on form HUD-11, Record of Employee Interview. The HUD-11's are compared to the corresponding contractor and subcontractor certified payrolls to test and verify the accuracy of the payroll information. HUD-11 forms are available on-line in a fillable format in HUDClips (see website list in the Appendix).
3. **Review contractor and subcontractor certified payroll reports.** In addition to comparing HUD-11's to the certified payroll reports, the contract administrator reviews the payroll reports generally to ensure that all laborers and mechanics are being paid no less than the wage rates contained on the applicable Davis-Bacon wage decision for the type of work they perform. Contract administrators should be particularly alert for indications of payroll falsification – misinformation on payrolls to conceal underpayments. Falsification on payrolls indicates an employer (contractor or subcontractor) is aware of their obligations, is knowingly underpaying their employees and is attempting to avoid detection of the violations.
 - a. **Discrepancies and/or underpayments on the payrolls.** Some underpayments and other errors can appear on the face of the payroll (i.e., do not involve falsification). In these cases, the contract



administrator contacts the prime contractor and provides instructions as to what steps should be taken to correct the payroll and to pay any back wages that may be due to the affected workers.

b. Indications of falsification on payrolls. Information reported on payrolls that indicates falsification suggests much more serious violations in terms of the amount of back wages that may be due and the number of employees effected. Such cases most often warrant investigation which can include on-site interviews with the workers, mailing questionnaires to employees, taking written statements or complaints, and other methods to gather and assess the facts of the case. HUD has prepared a list and explanation of four common falsification indicators that are easy to detect during payroll “spot-checks.” See Exhibit 5 in the Appendix at the back of this Guide.

- 4. Investigate probable violations and complaints of underpayment.** Contract administrators must investigate probable violations – particularly involving falsification of payrolls and complaints alleging underpayments.
- 5. Recommend debarment against repeat violators.** HUD has implemented a no-tolerance policy against contractors who repeat violations of Davis-Bacon labor standards. The first time an employer is found in violation, the employer is required to pay full restitution to all affected workers and to pay any CWHSSA liquidated damages (for overtime violations) which may be assessed. In addition, the employer must provide a written assurance of future compliance. If the employer promptly completes these corrective actions, HUD will not object if the LCA *does not* recommend debarment against the employer unless there are extenuating circumstances which warrant debarment. If the employer is found in violation again, the LCA must require full correction of any underpayments and payment of CWHSSA liquidated damages computed **and** a debarment recommendation made by the LCA against the employer is expected.
- 6. Prepare and submit enforcement reports.** In accordance with DOL regulations (29 CFR, Part 5, §5.7), the contract administrator must prepare enforcement reports on any case where an employer (contractor or subcontractor) has underpaid its employees by \$1,000 or more or where there is reason to believe the violations are aggravated or willful; and semi-annually concerning all Davis-Bacon labor standards administration and enforcement activities involving all Federal agencies and programs.
 - a. Employer-based enforcement reports.** These enforcement reports are used for three general purposes. First, to report to the Secretary of Labor on Davis-Bacon enforcement actions successfully completed in the field by all Federal and local agencies. Secondly, we use an enforcement report to refer to the Wage and Hour Administrator investigative findings which are in dispute (e.g., where the employer contests findings of underpayment made against it and requests a hearing to appeal the findings). Third, we use an enforcement report to make recommendations for debarment and other sanctions and for recommendations concerning liquidated damages computed for CWHSSA overtime violations. (See *Labor Relations Letter LR-92-02* for additional guidance concerning employer-based enforcement reports.)

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- b. **Semi-annual Enforcement Reports.** All Federal agencies and LCAs administering programs covered by Davis-Bacon wage requirements must report to DOL on all covered contracts awarded, and on all enforcement actions taken each six months. HUD collects the reports from its client agencies and compiles a comprehensive report to DOL covering all HUD-assisted Davis-Bacon construction activity. A copy of the Semi-Annual Report form and instructions for LCAs are included in the Appendix (Exhibit 4) and are available on HUD's Homepage in the Labor Relations Library.

Ten Steps to Streamlining Davis-Bacon – What and Why

You may have already noticed in the discussions above some of the streamlining measures HUD has put in place. These measures are described in more detail here:

1. LCAs do not have to obtain wage decisions from HUD.

Prior practice: Previously, LCAs were required to obtain a Davis-Bacon wage decision for each contract/project from HUD Labor Relations and were required to submit a form (SF-308, Request for Wage Determination) in order to make the request.

Streamlined: HUD now allows LCAs to obtain Davis-Bacon wage decisions from any source available to them. For example, LCAs can obtain wage decisions on-line at the GPO web site. Or the LCA can use a copy of the wage decision they already may have on file (provided the copy is still current). LCAs that wish to continue obtaining wage decisions from HUD can make the request by telephone, fax, mail or email. HUD can send the applicable wage decision back to the LCA by any of these means also. LCAs can obtain wage decisions immediately from the GPO web site and, in most cases, depending on the form of delivery requested by the LCA (e.g., email) LCAs should be able to obtain wage decisions from HUD within 24 hours or less.

2. Preconstruction Conferences for labor standards purposes are optional.

Prior practice: LCAs were required to hold a preconstruction conference (PCC) for each contract/project. During the PCC, the labor standards applicable to the project were described in detail. A copy of an attendance roster and complete minutes of the PCC were required in the contract file.

Streamlined: HUD acknowledges that there are many good reasons to hold a PCC such as discussing construction inspections, progress and contractor payment requirements, Section 3 employment and training and other issues particular to the project. However, HUD has determined that the time and resources used to conduct and document PCCs for labor standards purposes have not yielded measurably better results.

Many contractors have prior Davis-Bacon contract experience and have demonstrated successful performance. These contractors don't require the repetitive basic training such as provided in most PCC presentations. Basic training for contractors new to Davis-Bacon projects can



be provided more efficiently through printed guidelines such as HUD's *Contractor's Guide to Davis-Bacon*. Contractors who intend to comply can become familiarized with the fundamentals through the Guide and contact the contract administrator concerning any questions specific to the project. Contractors who understand the requirements and who may choose not to comply will in all likelihood not be persuaded to full compliance with a PCC labor standards presentation.

3. Project Wage Rate Sheets are offered for Davis-Bacon projects.

Prior practice: *HUD considered Davis-Bacon wage decisions inviolate and strongly discouraged any efforts to simplify or translate for any reason the content of a wage decision. As discussed earlier in this Guide, many Davis-Bacon wage decisions are lengthy and can cover several counties and/or types of construction work. In other words, not all of the information contained in a Davis-Bacon wage decision is relevant to the specific project to which it applies. HUD required LCAs to utilize the complete text of wage decisions at all times even though the wage decision frequently contained many pages of irrelevant information.*

Streamlined: Besides being in the construction contract to obligate the compliance of the prime contractor and any subcontractors (where HUD still recommends use of the full wage decision text in most cases), there are three important uses for the applicable Davis-Bacon wage decision. One is for the contractor's and any subcontractors' understanding about the specific wage rates that must be paid. The second is for posting at the job site so that the laborers and mechanics understand their rights. The third is for contract administrator's use in reviewing certified payroll reports.

A Project Wage Rate Sheet is a one-page, easy to read listing of the work classifications and wage rates that are applicable to the project. This one-page listing is much more user-friendly than the full-text wage decision for these three uses: A Project Wage Rate Sheet spells out more clearly the work classifications and wage rates contained in the wage decision for the contractor and subcontractors. The Project Wage Rate Sheet is much easier for laborers and mechanics to understand so that they can tell whether they are paid properly. And last, a Project Wage Rate Sheet – a one-page listing – is more helpful as a ready reference for contract administrators reviewing payroll reports.

LCAs can prepare a Project Wage Rate Sheet for contracts using the copy in the Appendix. The Project Wage Rate Sheet should be prepared only after the wage decision has been “locked-in” by contract award or start of construction, as applicable. HUD Labor Relations staff are available to provide assistance to LCAs in preparing Project Wage Rate Sheets.

4. Eliminate certain unnecessary or duplicative processes and notices to HUD.

Prior practice: *LCAs were required to send to HUD a start of construction notice and a final compliance report for each project. LCAs also were required to date stamp certified payrolls on receipt, and to date and initial certified payrolls when the payrolls were reviewed.*

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Streamlined: HUD has eliminated the start of construction notice and final compliance report. The important information collected in these reports is already captured in enforcement reports required by DOL regulations, therefore, the reports were duplicative. (See Streamlining measure #10, below.) In addition, date stamping payrolls on receipt and dating and initialing payrolls on review are actions inconsistent with a results-oriented approach and therefore are no longer mandated.

5. An LCA can develop its own enforcement file system.

Prior practice: LCAs were required to utilize filing systems mandated by HUD involving certain numbers and labeling of files and other file maintenance conditions.

HUD believes that LCAs can best determine how to maintain their files provided that certain minimum requirements are met. The minimum requirements include compliance with DOL regulations that certified payrolls and basic records relating to the payrolls are preserved not less than three years after completion of the project and the resolution of any enforcement actions which may carry over after completion. In addition, the files must be maintained in such a way that the LCA can utilize them to demonstrate its own compliance with its labor standards administration and enforcement responsibilities. For example, the LCA must be able to demonstrate to a HUD monitor where it is documented that the eligibility of the prime contractor was verified for each contract.

6. LCAs can target on-site interviews with laborers and mechanics.

Prior practice: LCAs were required to conduct on-site interviews with a “representative sampling” of all laborers and mechanics on each project. HUD did not offer a consistent guideline as to what constituted a “representative sampling.”

Streamlined: HUD is much more interested in using on-site interviews as a proactive enforcement tool than as a means to meet a “representative sampling” quota. Rather than conducting interviews randomly for the sake of assembling a sample, LCAs are encouraged to focus interviews to projects or groups of workers where violations are suspected or alleged. In this way, on-site interviews can be used to support a specific on-going investigation. HUD realizes that such focusing may mean that less on-site interviews may be conducted randomly; HUD considers focusing a far more effective means of utilizing on-site interview resources.

7. Payroll reviews limited to spot-checks and HUD-II comparison; the Goal: to detect falsification.

Prior practice: LCAs were required to thoroughly review each certified payroll submitted for each project. Any discrepancy, omission or error in the record had to be noted and corrected regardless of its significance.

Streamlined: HUD found much more serious violations involving more underpaid workers and significantly more wage restitution could be missed because the contract administrator was over tasked with HUD-



mandated payroll minutiae. HUD recognizes that it is not possible to conduct 100% payroll reviews, therefore, it is not possible to identify and correct every discrepancy and underpayment. It is also the case that the violations disclosed behind falsified payrolls are much more egregious (both in terms of effected workers and the amount of underpayment) than violations that appear on the face of the payroll. Accordingly, HUD has prioritized payroll reviews so that the objective is to detect falsification and so that our enforcement activities will yield the greatest impact. HUD has developed guidance on how to detect falsification through spot-checks and HUD-11 interview comparison. See *Payroll Falsification Indicators* in the Appendix (Exhibit 5).

8. Routine payroll review results can be communicated to the prime contractor by telephone and documented with a record to the file.

***Prior practice:** LCAs were required to document each payroll review with a written notice to the prime contractor concerning any and all corrections that were needed.*

***Streamlined:** Many times, the types of deficiencies which come to the attention of the contract administrator can be handled more efficiently and just as effectively with good informal communication (e.g., a telephone call, etc.) with the prime contractor rather than with formal letters. Examples of the types of issues that could easily be addressed informally – assuming the cooperation of both sides – include a missing payroll report or missing apprenticeship certificate, requests for employee authorizations for deductions, small underpayments that appear on the face of the payroll, and similar matters. With the prime contractor’s cooperation, these matters can be disposed of quickly with a telephone call and a brief note to the contract file documenting the call. If the prime contractor does not respond appropriately to this type of communication, it may be necessary to resort to more formal means.*

The last two Streamlining measures are about how we will better use the resources we have to meet our key objectives. Through Streamlining, we’ve eliminated substantial amounts of paperwork and processes so that we can redirect those resources to other activities that will produce improved Davis-Bacon enforcement and accountability.

9. Strenuously enforce Davis-Bacon requirements aiming enforcement activities at willful violators. Recommend debarment against repeat violators.

***Prior to Streamlining,** our enforcement activities were not as focused and therefore were not as effective. The greatest threat to construction workers receiving the statutorily-mandated prevailing wage for their craft is from employers who know what is required, choose not to pay the required prevailing wage rates and falsify certified payroll reports to conceal the underpayments. Such willful violators see the workers’ underpayment as their own gain and engage in deception to increase this gain. In addition, willful violators that successfully escape detection and are not required to pay prevailing wages will continue to bid on Davis-Bacon contracts until their violations are disclosed and administrative sanctions such as debarment are imposed.*

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HUD has made it a priority to target labor standards enforcement activities at willful violators (i.e., employers that falsify certified payrolls) and to recommend debarment against repeat violators. Barring aggravated circumstances, such as requiring kickbacks of wages from employees, contract administrators that issue findings of underpayment against a willful violator for a first offense will require from the employer a written statement assuring future compliance in addition to full wage restitution for all underpaid employees. If the employer is found in violation of labor standards again, contract administrators will recommend debarment based in part upon the breach of assurance of future compliance secured after the prior violation.

10. Improve reporting systems on labor standards administration and enforcement.

These reports are required by regulation and are important vehicles for recommendations concerning the disposition of investigative findings and debarment against employers that violate Davis-Bacon requirements. These reports also allow the Secretary of Labor to gather important information about government-wide Davis-Bacon contracting and enforcement.

HUD has relieved LCAs of certain reporting and processing requirements which were duplicative or unnecessary in order to promote full, timely and accurate LCA participation in the enforcement reporting system required by DOL regulations. In this way we enhance our accountability for Davis-Bacon labor standards administration and enforcement and can better measure our performance in applying Davis-Bacon wage standards where applicable and in protecting the right of the laborers and mechanics to receive prevailing wages when employed on covered work in HUD programs.



Davis-Bacon – Related Acronyms and Symbols

CDBG	– Community Development Block Grant
CFR	– Code of Federal Regulations
CPR	– Certified Payroll Report
CWHSSA	– Contract Work Hours and Safety Standards Act
DBA	– Davis-Bacon Act
DBRA	– Davis-Bacon and Related Acts
DOL	– Department of Labor
FHA	– Federal Housing Administration
FLSA	– Fair Labor Standards Act
HUD	– Housing and Urban Development (Department of)
IHA	– Indian Housing Authority
IHBG	– Indian Housing Block Grant
LCA	– Local Contracting Agency
LDP	– Limited Denial of Participation
O/T	– Overtime
PHA	– Public Housing Agency
S/T	– Straight-time
SAC	– State Apprenticeship Council/Agency
TDHE	– Tribally-Designated Housing Entity
§	– Section
¶	– Paragraph

Davis-Bacon – Related Web Sites

Basic Laws on Housing and Community Development:

www.house.gov/banking/bashlaws.htm

HUD Office of Labor Relations (Labor Relations Library):

www.hud.gov/offices/olr

HUD Regulations:

www.access.gpo.gov/nara/cfr/cfr-table-search.html

HUDClips (Forms):

www.hudclips.org/subscriber/html/forms.htm

DOL Davis-Bacon and Related Acts Homepage:

www.dol.gov/dol/esa/public/programs/dbra/index.html

Davis-Bacon Wage Decisions:

www.access.gpo.gov/davisbacon

DOL Regulations:

www.dol.gov/dol/esa/public/regs/cfr/whdcfr.htm

DOL Forms:

www.dol.gov/dol/esa/public/forms/whd/index.htm

EXHIBIT I

HUD Program Davis-Bacon Related Acts Programs administered by local contracting agencies (LCA's):

CDBG: Housing and Community Development Act of 1974, as amended; Section 110*:

- (a) All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance received under this title shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended.... Provided, That this section shall apply to the rehabilitation of residential property only if such property contains not less than 8 units....
- (b) Subsection (a) shall not apply to any individual that—
 - (1) performs services for which the individual volunteered;
 - (2) (A) does not receive compensation for such services; or
(B) is paid expenses, reasonable benefits, or a nominal fee for such services; and
 - (3) is not otherwise employed at any time in the construction work.

* Section 107(e)(2) of the HCDA permits the Secretary of HUD to waive the provisions of Section 110 in connection with grants to Indian tribes. This waiver action was taken and can be found in HUD regulations at 24 CFR §1003.603.

HOME: National Affordable Housing Act of 1990; Section 286:

- (a) **In General.** Any contract for the construction of affordable housing with 12 or more units assisted with funds made available under this subtitle shall contain a provision requiring that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act..., shall be paid to all laborers and mechanics employed in the development of affordable housing involved,....
- (b) **Waiver.** Subsection (a) shall not apply if the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and such persons are not otherwise employed at any time in the construction work.

EXHIBIT I

Public Housing: U.S. Housing Act of 1937, as amended (USHA); Section 12*:

- (a) Any contract for loans, contributions, sale, or lease pursuant to this Actshall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act..., shall be paid to all laborers and mechanics employed in the development of the project involved (including a project with nine or more units assisted under section 8 of this Act, where the public housing agency or the Secretary and the builder or sponsor enter into an agreement for such use before construction or rehabilitation is commenced), and the Secretary shall require certification as to compliance with the provisions of this section prior to making any payment under such contract.
- (b) Subsection (a) and the provisions relating to wages (pursuant to subsection (a)) in any contract for loans, annual contributions, sale, or lease pursuant to this Act, shall not apply to any individual that –
 - (1) performs services for which the individual volunteered;
 - (2) (A) does not receive compensation for such services; or
(B) is paid expenses, reasonable benefits, or a nominal fee for such services; and
 - (3) is not otherwise employed at any time in the construction work.

* Section 12(a) of the USHA also mandates the payment of HUD-determined prevailing wage rates to all maintenance laborers and mechanics engaged in the operation of PHA low-income housing projects.

Native American Housing Assistance and Self-Determination Act of 1996, as amended, (NAHASDA); Section 104(b)*:

- (1) **In general.** Any contract or agreement for assistance, sale, or lease pursuant to this Act...shall also contain a provision that not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Act of March 3, 1931 (commonly known as the Davis-Bacon Act;...); shall be paid to all laborers and mechanics employed in the development of the affordable housing involved, and the Secretary shall require certification as to compliance with the provisions of this paragraph before making any payment under such contract or agreement.
- (2) **Exceptions.** Paragraph (1) and the provisions relating to wages (pursuant to paragraph (1)) in any contract or agreement for assistance, sale, or lease pursuant to this Act, shall not apply to any individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work.

EXHIBIT I

- (3) **Application of Tribal Laws.** Paragraph (1) shall not apply to any contract or agreement for assistance, sale, or lease pursuant to this Act, if such contract or agreement is otherwise covered by one or more laws or regulations adopted by an Indian Tribe that requires the payment of not less than prevailing wages, as determined by the Indian tribe.

* Section 104(b)(1) of NAHASDA also mandates the payment of HUD-determined prevailing wage rates to all maintenance laborers and mechanics engaged in the operation of NAHASDA-assisted affordable housing projects.

Housing Assistance for Native Hawaiians, Title VIII of the Native American Housing Assistance and Self-Determination Act of 1996, as amended, (NAHASDA); Section 805(b)*:

- (1) **In general.** Any contract or agreement for assistance, sale, or lease pursuant to this title shall contain – ...
- (B) a provision that an amount not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Act commonly known as the “Davis-Bacon Act”...shall be paid to all laborers and mechanics employed in the development of the affordable housing involved.
- (2) **Exceptions.** Paragraph (1) and provisions relating to wages required under paragraph (1) in any contract or agreement for assistance, sale, or lease under this title, shall not apply to any individual who performs the services for which the individual volunteered and who is not otherwise employed at any time in the construction work and received no compensation or is paid expenses, reasonable benefits, or a nominal fee for those services.

* Section 805(b)(1) also mandates the payment of HUD-determined prevailing wage rates to all maintenance laborers and mechanics engaged in the operation of NAHASDA-assisted affordable housing projects.

CDBG: Factors of Labor Standards Applicability

1. ...construction work financed...

CDBG can finance activities other than “construction work” which do not trigger Davis-Bacon requirements; e.g., *real property acquisition, purchase of equipment, architectural and engineering fees, other services (legal, accounting, construction management), and other non-construction items (furniture, business licenses, real estate taxes, tenant allowances for such items).*

Also, financing is not limited to the act of paying for the construction work directly. Financing can mean, for example, using CDBG assistance to pay the interest charged or to reduce the interest rate on a construction loan (*including certain collateral accounts*). Generally, financing also means using CDBG funds to provide permanent financing (take-out loan) following construction.

2. ...in whole or in part...

If CDBG funds finance only a portion of a construction work, labor standards are applicable to the *entire* construction work.

3. All laborers and mechanics employed by contractors or subcontractors...

Labor standards provisions *do not* apply to employees of the grantee (force account workers) that may be engaged on an otherwise covered project. Note: The construction work *is covered but these force account workers are excluded.*

4. ...shall apply to the rehabilitation of residential property only if such property contains not less than 8 units.

Typically, single-family homeowner properties are excluded under this exemption. However, *property* is not limited to a specific building. Property is defined as one or more buildings on an undivided lot or on contiguous lots or parcels, which are commonly-owned and operated as one rental, cooperative or condominium project. Examples of 8+ unit properties include:

- 5 townhouses side-by-side which consist of 2 units each.
- 3 apartment buildings each consisting of 5 units and located on one tract of land.
- 8 single-family (not homeowner) houses located on contiguous lots.

EXHIBIT 2

EXHIBIT 2

HOME: Factors of Labor Standards Applicability

1. ***...affordable housing with 12 or more units assisted with funds made available under this subtitle..***

Unlike CDBG, the standard for coverage is *assisted* not *financed* – which provides for much broader application. This means that Davis-Bacon requirements are operable without regard to whether the HOME funds are used for construction or non-construction activities. Non-construction activities include real property acquisition, architectural and engineering fees, and other professional services. In some cases, Davis-Bacon requirements may be triggered when HOME funds are used to provide downpayment assistance to individual homebuyers. [LCAs should refer to HUD’s HOME regulations (24 CFR 92.354(a)(2)) or consult with HUD Labor Relations Staff if their project involves downpayment assistance to homebuyers.]

This also recognizes that HOME projects can contain units that are *not* assisted by HOME. The threshold applies only to the number of units assisted by HOME. For unit threshold purposes, we use the number of units identified as “HOME” units under the program definition whether determined on a pro-rata basis, specific designation or other means allowable by HUD’s Office of Community Planning and Development (CPD).

Note also that once Davis-Bacon requirements are triggered, the labor standards are applicable to the construction of the entire project – including the portions of the project other than the assisted units.

2. ***Any contract for the construction of affordable housing with 12 or more units assisted with funds...***

Davis-Bacon requirements are applicable to *contracts for construction* covering 12 or more HOME-assisted units. Davis-Bacon does not follow “construction work” or “projects”. This factor has implications in two ways:

First, a HOME project with 12 or more assisted units that is constructed under multiple contracts each containing less than 12 HOME units is not covered. (*Note: HOME regulations prohibit breaking a single project into multiple contracts for the purpose of avoiding Davis-Bacon.*)

Second, if multiple HOME projects each containing less than 12 assisted units are grouped into a contract(s) for construction that covers a total of 12 or more assisted units, the contract is covered.

3. ***Sweat Equity.***

HOME provides for a sweat equity program (see NAHA Sec. 255) which permits members of an eligible family to provide labor in exchange for acquisition of property for homeownership or to provide labor in lieu of, or as a supplement to, rent payments. Such sweat equity participants are exempt from Davis-Bacon prevailing wage requirements.

PROJECT WAGE RATE SHEET

Project Name: _____ Wage Decision: _____

Project Number: _____ County: _____

<u>CLASSIFICATION</u>	<u>BHR</u>	<u>FB</u>	<u>Total</u>	<u>Laborers – FB:</u> _____		
Bricklayers	_____	_____	_____	<u>Group</u>	<u>BHR</u>	<u>Total</u>
Carpenters	_____	_____	_____	_____	_____	_____
Cement Masons	_____	_____	_____	_____	_____	_____
Drywall Hangers	_____	_____	_____	_____	_____	_____
Electricians	_____	_____	_____	_____	_____	_____
Iron Workers	_____	_____	_____	_____	_____	_____
Painters	_____	_____	_____	<u>Truck Drivers – FB:</u> _____		
Plumbers	_____	_____	_____	<u>Group</u>	<u>BHR</u>	<u>Total</u>
Roofers	_____	_____	_____	_____	_____	_____
Sheet Metal Workers	_____	_____	_____	_____	_____	_____
Soft Floor Layers	_____	_____	_____	_____	_____	_____
Tapers	_____	_____	_____	_____	_____	_____
Tile Setters	_____	_____	_____	<u>Operators – FB:</u> _____		
<u>OTHERS</u>				<u>Group</u>	<u>BHR</u>	<u>Total</u>
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

ADDITIONAL CLASSIFICATIONS (HUD 4230-A)

<u>CLASSIFICATION</u>	<u>BHR</u>	<u>FB</u>	<u>Total</u>	<u>Date HUD Approved</u>	<u>Date DOL Confirmed</u>
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

EXHIBIT 4

SEMI-ANNUAL ENFORCEMENT REPORT INSTRUCTIONS – AGENCY REPORT

Please follow these instructions while compiling the Semi-Annual Labor Standards Enforcement Report for Local Contracting Agencies (HUD Programs) (SL/98-04).

Introduction

Department of Labor Regulations 29 CFR §5.7(b) require Federal agencies administering programs subject to Davis-Bacon and Related Act (DBRA) and Contract Work Hours and Safety Standards Act (CWHSSA) labor standards to furnish a Semi-Annual Labor Standards Enforcement Report to the Administrator of the Wage and Hour Division. These reports are due to the DOL on April 30 and October 31 of each year. As you know, some HUD programs are administered by local agencies for Davis-Bacon labor standards compliance. It's important to collect information from local agencies so that we include enforcement activities for all HUD programs in the Report to DOL.

The report format has been revamped as part of our overall streamlining effort. The report was expanded slightly in order to allow us to eliminate other much more frequent and cumbersome reports which were required of you, such as Start of Construction Notices and Project Compliance Reports. We instituted these changes to reduce unnecessary paperwork burdens, simplify the report, and maintain the accuracy of its content. Other improvements were made based upon your suggestions. The report is divided into two Parts: the first part concerns contracting activity and the second part concerns enforcement.

The HUD Labor Relations staff for your area will send a reminder to you about preparing the report and will inform you of the date your report is due. You are encouraged to use the HUD Report forms attached. However, you may use another format so as long as all of the information requested on the HUD Report form is provided.

Definitions and Guidance

Report periods run on a fiscal year basis. The first report for each year covers October 1 through March 30; the second report covers April 1 through September 30.

EXHIBIT 4

Part I – Contracting Activity – This part concerns only contracts that were *awarded* during this period. *Do not* include contracts that were awarded prior to this period even though the contract may still be underway.

1. Enter total number of prime contracts subject to DBRA/CWHSSA awarded during this period. Track contracts by award date or start of construction – do not track by bid opening date. Housing Authorities and IHBG recipients: Include force account work that is subject to DBRA.
2. Enter the total dollar amount of the contracts and/or PHA/IHA/IHBG force account work reported in #1.
3. List individual project/contract names, numbers, amounts, the wage decision and modification numbers in the contract and the wage decision effective date (bid opening date, contract award date or start of construction, as appropriate) relating to Items 1 & 2.

Part II – Enforcement Activity – This part concerns all enforcement activity no matter when the contract was awarded or construction began.

4. Enter the number of employers (contractors, subcontractors, lower-tier subcontractors) against whom complaints were received during the report period. List the names of the employers against whom complaints were received and the projects involved.
5. Enter the number of employers which were referred to HUD Labor Relations or DOL staff for compliance investigations, or for §5.11 and/or debarment hearing. List the employer, project, and agency to which the case was referred, and the reason for referral – investigation, §5.11 and/or debarment (§5.12) hearing.
6. Enter information relative to wage restitution that was collected and/or disbursed. This includes restitution disbursed by the agency; restitution reported on certified payroll correction reports, amounts collected but not disbursed because workers could not be found. Also list liquidated damages collected for Contract Work Hours and Safety Standards Act (CWHSSA) overtime violations.

EXHIBIT 4

SEMI-ANNUAL LABOR STANDARDS ENFORCEMENT REPORT

Agency Name: _____

Local Contracting Agencies (HUD Programs)

Period Covered: From _____ to _____

PART I – CONTRACTING ACTIVITY*

1. Number of prime contracts subject to the Davis-Bacon and Related Acts (DBRA) and/or the Contract Work Hours and Safety Standards Act (CWHSSA) awarded this period:

(1) _____

2. Total dollar amount of prime contracts reported in Item 2 above:

(2) _____

3. List Contract/Project, Amounts, Wage Decision and Effective date (Items 1 & 2):

Project
Name/Number

Contract
Amount

Wage Decision
& Modifications

Wage Decision
Effective Date

*Use additional pages if necessary.

SL/98-04(1) (6/01)

SEMI-ANNUAL LABOR STANDARDS ENFORCEMENT REPORT

Agency Name: _____

Local Contracting Agencies (HUD Programs)

Period Covered: From _____ to _____

PART II – ENFORCEMENT ACTIVITY*

4. Number of employers against whom complaints were received (list employers and projects involved below):

(4) _____

EmployerProject(s)

5. Number of cases (employers) referred to (a) HUD Labor Relations Staff or (b) Department of Labor (DOL) for investigation or §5.11 hearing (list referrals below):

(5)(a) HUD _____

(5)(b) DOL _____

EmployerProjectHUD or DOLInvest. or Hearing

6. Wage restitution: (a) Number of workers for whom wage restitution was collected/disbursed; (b) Total amount of Davis-Bacon wage restitution; (c) Total amount of CWHSSA overtime restitution; and (d) Total amount of liquidated damages collected for CWHSSA overtime violations. Include wage restitution disbursed by the agency, amounts reported on correction certified payrolls, amounts collected but not disbursed because the worker(s) could not be found, etc.

(6)(a) Number _____

(6)(b) Davis-Bacon Restitution Amount _____

(6)(c) CWHSSA Restitution Amount _____

(6)(d) Liquidated Damages Collected _____

*Use additional pages if necessary.

SL/98-04(1) (6/01)

EXHIBIT 5

Payroll Falsification Indicators

Certified payroll reports are fairly straightforward records of employees, work classification, hours worked, rate(s) of pay, gross earnings, deductions and net wages paid. The information required for certified payrolls involves no more than the information any responsible employer must maintain concerning its basic business operations.

Davis-Bacon compliance basically involves three factors: 1. The type (classification) of work performed; 2. The number of hours worked; and 3. The prevailing wage rate for that classification. A fourth factor involves the actual payment of wages by check and/or cash. In order to conceal underpayments, a willfully violating employer must falsify the payroll report as it pertains to one or more of these factors. There are four falsification indicators that are easy to detect on certified payrolls in a “spot-check”:

1. **Ratio of laborers to mechanics.** Look for excessive use of laborers over mechanics. Generally there should be no more than one laborer for each mechanic (1:1) except for landscaping, or cement or other paving work.
Indicative of: Misclassification. Workers are performing higher-paying mechanic duties but are misclassified and paid at lower Laborer wage rates.
2. **Too few or irregular hours.** Look for employees that never work 40 hours per week; for crews that work in a scattered fashion; for hours reported in tenths or hundredths (e.g., 13.6 hours). Most people work a 40-hour workweek. Most crews work together on a job site. Most employers and employees track work hours by whole, half and quarter hours not by tenths or hundredths.
Indicative of: Reduction of Hours. Actual hours worked are reduced to “fit” in a fabricated calculation: (Reduced hours) x (Rate required on wage decision) = Substandard wages actually paid based upon a lower rate of pay.
3. **Discrepancies in wage computations.** Look for gross wages paid in “round” numbers (e.g., \$700) that don’t agree with the product of reported hours multiplied by the rate of pay. For example, a payroll showing 20 hours times \$33.68 (the rate on the wage decision) and gross wages of \$700. (20 hours times \$33.68 equals \$676.60 *not* \$700.)
Indicative of: Falsification of rate of pay such as piece work or lower (but more even) rate. For example, the wage decision requires \$33.68/hour for the type of work performed but the employer chooses to pay \$17.50 per hour. (40 hours times \$17.50 equals \$700.) The employer can’t make the fabricated calculation “fit” precisely because the Davis-Bacon wage rate is not an even figure.
4. **Extraordinary deductions.** Look for unidentified or disproportionate deductions, for example, an employee whose savings account deduction is nearly as much or more than the weekly take-home pay.
Indicative of: Kickbacks or basic underpayment. The employer takes his “cut” from the back end of the computation (after gross earnings) rather than the front end (falsifying the classification, hours or wage rate).

If these indicators appear on payrolls you will want to take preliminary steps to test whether the payrolls are accurate or false. For example, you can target on-site interviews or send questionnaires to the affected workers to get their perspective and compare the interview and/or questionnaire statements to the payroll reports. If an investigation is warranted, you will want to learn what information on the payrolls is false and what is true. (Employers rarely falsify *all* of the information on payrolls.) Eventually, you will need to compute the amounts of backwages that are due and knowing what information on the payroll is true can be critical to making these computations.

U.S. Department of Housing and Urban Development
Office of Labor Relations
Washington, DC 20410

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Labor Relations Desk Guide

